



PUBLIC NOTICE

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Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

News media information 202 / 418-5000
Fax-On-Demand 202 / 418-2830
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA – 00-566

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 14, 2000

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. A public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

Digital Satellite Broadcasting Corp. - Request for waiver and refund of the satellite system launch and operation authority application fee for Digital Satellite Broadcasting Corp. at Seattle, WA. **Granted.** (February 15, 2000). [See In the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 949, (rel 1987). See also, Fee Decisions of the Managing Director Available to the Public, 9 FCC Rcd 2223, 2240-41 (1994)].

Green TV Corporation - Request for waiver and reduction of FY 1998 and subsequent years on regulatory fees for KSBS (TV) at Steamboat Springs, CO. **Denied.** (February 15, 2000). [See Implementation of Section 9 of the Communication Act, 10 FCC Rcd 12759, 12763 (1995); See also, TCI Cablevision of Colorado, 11 FCC Rcd 6109, (1996) (TCI)].

Heartland Wireless Communications, Inc. - Request for waiver and refund of application fees for Heartland Wireless Communications, Inc. at Plano, TX. **Granted.** (February 23, 2000). [See Accord Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12762 (1995)].

KCBR - Request for reduction in FY 1998 regulatory fees and refund for FY 1997 fees on KCBR-AM at Colorado Springs, CO. **Denied.** (February 15, 2000). [See 47 CFR 1.1166 and 47 U.S.C. 159].

KQTN - Request for waiver of late charge penalty payment for FY 1998 regulatory fees on KQTN at Lordsburg, NM. **Denied.** (February 23, 2000). [See Implementation of Section 9 of the Communication Act, 9 FCC Rcd 5333, 5345 (1994)].

Lotus Communications Corp. - Request for refund on FY 1998 regulatory fees for Lotus Communication Corp at Los Angeles, CA. **Granted.** (February 17, 2000).

MJR Media, Inc. - Request for waiver of late charge penalty payment for FY 1998 regulatory fees on MJR Media, Inc. (WISL) at Shamokin, PA. **Denied.** (February 23, 2000).

Nextel Communication Corp. - Request for waiver of application fee for Nextel Communication, Inc. at Rutherford, NJ. **Denied.** (February 8, 2000). [See Memorandum Opinion and Order, FCC 00-32 (2000)].

Quest Communications, Inc. - Request for waiver of late charge penalty payment for FY 1998 regulatory fees on Quest Communications, Inc. at Ludington, MI. **Denied.** (February 23, 2000).

Sprint PCS - Request for waiver or reduce of late payment penalty for Sprint PCS at Overland Park, KS. **Denied.** (January 14, 2000).

WEYS (TV) - Request for waiver and reduction in FY 1998 regulatory fees and subsequent years for WEYS (TV) at Key West, FL. **Granted.** (February 15, 2000). [See Dynamic Cablevision of Florida, 11 FCC Rcd 9880, (1996). See also Implementation of Section 9 of the Communication Act, 10 FCC Rcd 12759, 12763 (1995)].

WLVA-AM - Request for deferral of FY 1998 regulatory fees for WLVA-AM at Lynchburg, VA. **Dismissed.** (February 15, 2000). [See 47 CFR 1.1166 (b) and Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd. 12759, 12761].

WOAY 860AM - Request for waiver of late payment penalty for FY 1998 regulatory fees for WOAY 860AM at Oak Hill, WV. **Denied.** (February 23, 2000).

WPVG, Inc. - Request for waiver of late payment penalty for FY 1997 regulatory fees for WPVG (AM) at Potomac, MD. **Denied.** (February 15, 2000).

WVHL - Request for reduction of FY 1998 regulatory fees for WVHL (FM) at Farmville, VA. **Denied.** (February 29, 2000). [See Report and Order, In re Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, FCC 9 Rcd 5333 (June 1994); 47 CFR 1.1160, 1.1166. See also 47 CFR 73.3573].

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE CREDIT & DEBT MANAGEMENT CENTER AT (202) 418-1995.

C&DMC

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

OFFICE OF
MANAGING DIRECTOR

FEB 15 2000

86-285

Cheryl A. Tritt, Esq.
Morrison & Foerster, LLP
2000 Pennsylvania Avenue
Washington, D.C. 20006-1888

RE: Request for Waiver and Refund of
Satellite Launch and Operation Fees
Digital Satellite Broadcasting Corporation
Fee Control No. 9301158160319002

Dear Ms. Tritt:

This is in response to the request for waiver and refund of the satellite system launch and operation authority application fee, filed on behalf of Digital Satellite Broadcasting Corporation (DSBC). We apologize for failing to respond to your request in a timely manner.

Your request states that DSBC initially applied for construction and launch and operation authority to provide satellite digital audio radio service (DARS) in December 1992. You also state that the Commission conducted an initial review and accepted the application by public notice on February 19, 1993. The Commission subsequently adopted service rules for DARS on March 3, 1997 and decided to assign two DARS licenses through auction. DSBC entered but lost the auction for the DARS licenses. On October 28, 1997, the Commission dismissed DSBC's application.

You state that we must waive and refund the application fee because the Commission incurred little or no costs to administer DSBC's application and thus the fee paid was unduly excessive. The Commission has determined that there is "no justification in the statute or legislative history for apportioning fees according to the actual work done on any particular application." *In the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 949, (rel. 1987). You also cite the Commission fee determination refunding launch and operation application fees to Sky-Highway Radio Service as authority for refunding DSBC's application fee. FCC Public Notice, *Fee Decisions of the Managing Director Available to the Public*, 9 FCC Rcd 2223, 2240-41 (1994). In that determination, we found the fees would be refunded because the applicant withdrew the applications prior to acceptance by the Commission or any substantive review by staff, as well as prior to the development of the DARS rules. In contrast, DSBC's application was accepted and substantively reviewed by staff, both at the initial review stage and subsequently with regard to necessary technical and legal analyses. DSBC


Cheryl A. Tritt, Esq.

2.

pursued the processing of its application through the auction process. We are mindful, however, of the unique situation in which DSBC was placed when the decision to auction the DARS licenses occurred during the processing of its application. In this unique situation, we believe a refund of 90% of the fee is appropriate.

A check, made payable to the maker of the original check, and drawn in the amount of \$63,000.00, will be sent to DSBC at the earliest practicable time. If you have any questions concerning the refund, please call Credit & Debt Management Center at (202) 418-1995.

Sincerely,


for Mark Reger
Chief Financial Officer

9301158160319002

RECEIVED

MORRISON & FOERSTER LLP

ATTORNEYS AT LAW

SAN FRANCISCO
LOS ANGELES
SACRAMENTO
ORANGE COUNTY
PALO ALTO
WALNUT CREEK
DENVER

2000 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763

January 21, 1999

NEW YORK
LONDON
BRUSSELS
BEIJING
HONG KONG
SINGAPORE
TOKYO
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JAN 21 1999

Writer's Direct Contact
(202) 887-1510
ctritt@mofo.com

By Messenger

Mr. Andrew Fishel, Managing Director
Office of the Managing Director
Federal Communications Commission
The Portals
445 12th Street, S.E.
Washington, D.C. 20554

Re: Refund of Satellite Launch and Operation Fees
File Nos. 12/13 DSS-P-93; 28 DSS-LA-93

RECEIVED
JAN 22 3 49 AM '99
ASSOC. MNG. DIR.
FINANCIAL OPERATIONS
(ATTN-FO)

Dear Mr. Fishel:

Digital Satellite Broadcasting Corporation ("DSBC") requests that the Federal Communications Commission ("FCC" or "Commission") refund certain fees submitted by DSBC in connection with the above-captioned application to construct, launch and operate a satellite system in the geostationary-satellite orbit ("GSO") to provide satellite digital audio radio service ("satellite DARS or SDARS"). Specifically, DSBC, a former applicant for a satellite digital audio radio service system, requests that the FCC refund the \$70,000 satellite launch and operation fees that DSBC submitted on January 12, 1993. Because the Commission incurred little or no costs in administering DSBC's request for authority to launch and operate a satellite system, the fees submitted by DSBC were unduly excessive and must be refunded.

DSBC initially applied for a satellite DARS in December 1992, submitting the required construction application fee of \$2,030 and a fee of \$70,000 for launch and operating authority.¹ On February 19, 1993, after initial review, the Commission accepted DSBC's application for filing.² The Commission did not adopt service rules for satellite DARS licensees until March 3, 1997 at which time the Commission also decided

¹ FCC Public Notice, *Digital Audio Radio Service Satellite Systems Applications Launch Fee Required*, 7 FCC Rcd 8594 (1992).

² FCC Public Notice, *Digital Audio Radio Service Satellite System Applications Acceptable for Filing*, 8 FCC Rcd 986 (1993).

RECEIVED
FEB 1 9 50 AM '99
ASSOC. MNG. DIR.
FINANCIAL OPERATIONS
(ATTN-FO)

MORRISON & FOERSTER LLP

Managing Director

January 21, 1999

Page Two

to assign two DARS licenses through competitive bidding.³ On March 6, 1997, the Commission announced the filing requirements for the DARS auction.⁴ On March 27, 1997, DSBC submitted by wire transfer to Mellon Bank, Form 159 and \$3,000,000 dollars in upfront fees to qualify to participate in the DARS auction conducted on April 1 and April 2, 1997. On October 28, 1997, the FCC dismissed DSBC's application to launch and operate GSO satellite DARS system and announced that it had awarded mutually exclusive authorizations to the successful winners of the DARS auction, American Mobile Radio Corporation ("AMRC") and Satellite CD Radio ("CD Radio").⁵ To the best of DSBC's knowledge, the Commission did not expend any resources on its launch and operation application from the time it was put on public notice until it was dismissed in October 1997.

Under the Commission's general authority, it may "act on fee problems as equity requires."⁶ Because the Commission refunded launch and operation fees to another DARS applicant under similar circumstances, DSBC seeks the same resolution under that precedent. On April 11, 1994, the Office of Managing Director granted Sky-Highway's request for a refund of its \$140,000 fee payment to launch and operate a DARS system, concluding that the fees were "unduly excessive."⁷ In refunding the fee payment, the FCC acknowledged that processing of the launch and operation application likely would

³ *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754 (1997).

⁴ FCC Public Notice, *FCC Announces Auction of Satellite Digital Audio Radio Service, Auction Notice and Filing Requirements For 2 DARS Licenses Scheduled For April 1, 1997*, 12 FCC Rcd 3586 (1997).

⁵ *Digital Satellite Broadcasting Corporation, Application for Authority to Construct, Launch, and Operate Satellites in the Satellite Digital Audio Radio Service*, 13 FCC Rcd 8976 (1997).

⁶ *Establishment of Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 950 (1987) (no rule needed, general authority sufficient to resolve fee problems).

⁷ FCC Public Notice, *Fee Decisions of the Managing Director Available to the Public*, 9 FCC Rcd 2223 (1994); Letter from Marilyn McDermott, Associate Managing Director for Operations, Federal Communications Commission, to Lawrence Gilberti, President, Sky-Highway Radio Corp. at 2 (Apr. 11, 1994) (granting refund of fees to launch and operate) ("*FCC Refund Letter*"); Letter from Lawrence Gilberti, President, Sky-Highway Radio Corp., to Marilyn McDermott, Associate Managing Director for Operations, Federal Communications Commission (May 7, 1993) (requesting refund of fees to construct, launch and operate).

MORRISON & FOERSTER LLP

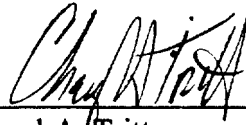
Managing Director
January 21, 1999
Page Three

be deferred until the Commission adopted DARS service rules, and therefore concluded that refund of Sky-Highway's launch and operation fees was warranted.⁸

Because the Commission accepted its application for filing and initiated application processing, DSBC does not seek refund of its construction permit fees.⁹ However, as the FCC has acknowledged, processing of applications for launch and operational authority generally does not occur until after service rules are adopted.¹⁰ DSBC's application was dismissed on October 28, 1997, shortly after service rules were adopted, and to the best of DSBC's knowledge, no Commission resources were required between the time service rules were adopted and its application to launch and operate was dismissed. Accordingly, DSBC respectfully requests a refund of the \$70,000 fees submitted to the Commission for launch and operational authority of its DARS system.¹¹

Please direct any questions to the undersigned.

Respectfully submitted,



Cheryl A. Tritt
Counsel for Digital Satellite Broadcasting
Corporation

Enclosure
cc: Joe Walter

⁸ FCC Refund Letter at 2.

⁹ FCC Refund Letter at 2 (Sky-Highway's construction permit fee retained where construction permit applications were in preliminary processing stage at time of withdrawal).

¹⁰ *Id.*

¹¹ A copy of DSBC's check for the launch and operation fees is enclosed.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

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FEB 15 2000

OFFICE OF
MANAGING DIRECTOR

Guy N. Benson, Esq.
Bosari & Paxson
2033 M Street, N.W.
Suite 630
Washington, D.C. 20036

86-285

RE: Request for Waiver and Reduction of
Regulatory Fees for Fiscal Year 1998
GreenTV Corporation KSBS(TV)
Fee Control No. 9809228835181004
Fee Paid \$1,075.00

Dear Mr. Benson:

This is in response to the request for waiver and reduction of regulatory fees for Fiscal Years (FY) 1998 and subsequent years, filed on behalf of GreenTV Corporation, licensee of KSBS(TV), Steamboat Springs, Colorado (KSBS). Your request for partial waiver and reduction of regulatory fees for FY 1998 was filed with a check for \$1,075.00, the regulatory fee amount for a remaining market UHF television station. The FY 1998 regulatory fee established for KSBS is \$10,750.00, based on its presence in the 18th DMA, Denver.

In your request, you argue that it would be unfair for KSBS to pay its assessed regulatory fee as the Cable Services Bureau granted the request of a cable system in the Denver DMA to exclude KSBS from carriage on its system, citing *TCI Cablevision of Colorado*, 11 FCC Rcd 6109, (1996) (*TCI*). In *TCI*, the Cable Services Bureau found that KSBS did not serve or have another nexus to the metropolitan Denver market served by the cable company opposing the must-carry claim by KSBS and therefore the purposes of the Cable Television Consumer Protection and Competition Act of 1992 are best effectuated by excluding the metropolitan Denver community from KSBS' market for purposes of carriage rights. *Id.*, at 6117. You present no other evidence or reasoning for a regulatory fee reduction to the amount for a remaining market station in your request. We interpret your citation to *TCI* as a request to take administrative notice of the memorandum opinion and order, which we grant, and your representation that there have not been material changes to the facts as described in the memorandum opinion and order or as stated in your arguments as reported therein.

The Commission has set standards for determining whether the regulatory fees for a television station may be reduced below the fees assessed for stations in the relevant DMA. *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12763 (1995). The Commission will reduce fees for television stations having certain characteristics. *Id.* Such a station may not be an affiliate of a major network, must be

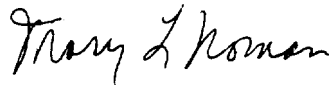
located outside the metropolitan area of the principal city in the assigned DMA, and may not provide a Grade B signal to a substantial portion of the assigned market's metropolitan areas. *Id.* Stations that meet this criteria and request fee reduction will be assessed regulatory fees based on the number of households they serve; stations that serve fewer television households than are in the top 100th market will be assessed the regulatory fee for remaining market stations. *Id.*

We note that KSBS is located outside of Denver, the principal city in its assigned DMA and, according to the *1998 Broadcasting & Cable Yearbook*, KSBS is an independent station. In the *TCI* proceeding, however, KSBS represented that its signal was provided to the Denver Front Range through a translator station at Woodbine, Colorado. *TCI*, at 6113. Therefore, KSBS does not meet the requirements for fee reduction below the fee assessed to stations in its assigned DMA.

The correct FY 1998 regulatory fee for KSBS is \$10,725.00. KSBS paid \$1,075.00, leaving a balance due of \$9,650.00. Payment in the amount of \$9,650.00 must be submitted together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. A late charge penalty of 25% will be assessed and due if the Commission does not receive full payment 30 days from the date of this letter. You are cautioned that failure to submit payment may result in further sanctions, including but not limited to, the initiating of a proceeding to recover the unpaid fee amount, late charge penalty, and interest pursuant to the provisions of the Debt Collection Improvement Act of 1996.

If you have any questions concerning this letter, please call the Credit & Debt Management Center at 418-1995.

Sincerely,


for Mark Reger
Chief Financial Officer

780422883518/004

ORIGINAL

BORSARI & PAXSON

ATTORNEYS & COUNSELLORS AT LAW

2033 M STREET, N.W., SUITE 630

WASHINGTON, D.C. 20036

TELEPHONE NUMBER

(202) 296-4800

GEORGE R. BORSARI, JR.

ANNE THOMAS PAXSON

GUY N. BENSON

(ADMITTED ONLY IN CALIFORNIA)

FACSIMILE NUMBER

(202) 296-4460

March 23, 1999

RECEIVED

MAR 23 1999

FCC MAIL ROOM

VIA HAND DELIVERY

Ms. Regina W. Dorsey
Chief, Billings & Collections Branch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*GreenTV Corporation - KSBS(TV), Steamboat
Springs, CO - 1998 Annual Regulatory Fees*

Dear Ms. Dorsey:

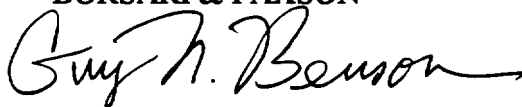
On behalf of GreenTV Corporation ("GreenTV"), licensee of KSBS(TV), Steamboat Springs, CO, this letter responds to your letter dated March 3, 1999, in which you ask that the licensee explain the circumstances surrounding its payment of the regulatory fee due for 1998. GreenTV paid one thousand seventy-five dollars (\$1,075) for its 1998 fee. In your letter, you state that "the correct fee for this station should be \$10,725."

Attached is a copy of the request for waiver that was filed with the Commission, at the suggestion of the Cable Services Bureau, on September 18, 1998, along with what GreenTV believes was the appropriate regulatory fee. That waiver request points out that the Cable Services Bureau has determined that KSBS(TV) is not a part of the Denver ADI, and therefore, the station should not be assessed a regulatory fee based on that market.

As of today, the Commission has yet to act on GreenTV's request for waiver.

Respectfully submitted,

BORSARI & PAXSON



Guy N. Benson

BORSARI & PAXSON

ATTORNEYS & COUNSELLORS AT LAW

2033 M STREET, N.W., SUITE 630

WASHINGTON, D.C. 20036

TELEPHONE NUMBER

(202) 296-4800

FILE COPY

GEORGE R. BORSARI, JR.

ANNE THOMAS PAXSON

GUY N. BENSON
(ADMITTED ONLY IN CALIFORNIA)

FACSIMILE NUMBER

(202) 296-4460

FCC/MELLON**SEP 18 1998**

September 17, 1998

VIA FEDERAL EXPRESS

Federal Communications Commission
c/o Mellon Bank
Three Mellon Bank Center
525 William Penn Way
27th Floor, Room 153-2713
Pittsburgh, PA 15259-0001
ATTN: FCC Module Supervisor

*Payment of Annual Regulatory Fees for
GreenTV Corp. and Request for Partial
Waiver*

Sir:

Forwarded herewith, on behalf of Green TV Corp., is its Remittance Advice (FCC Form 159) and a check, made payable to the Federal Communications Commission in the amount of Three Thousand Four Hundred Seventy-Five Dollars (\$3,475.00), to cover annual regulatory fees for KSBS(TV), Steamboat Springs, CO, K63GB, K18FI, KDMD(TV), Anchorage, AK, K41DP, K18ED, and K22AG.

The Commission is requested to partially waive its regulatory fee for KSBS(TV). KSBS is licensed to Steamboat Springs, CO, which is part of the Denver ADI. Denver is in the eighteenth (18th) market, and the regulatory fee would normally be Ten Thousand Seven Hundred Twenty-Five Dollars (\$10,725). Although in the past, KSBS has paid a regulatory fee based on its presence in the 18th DMA, in 1996 the Cable Services Bureau modified KSBS's DMA to exclude the populous Denver communities.¹

KSBS believes that the Cable Services Bureau was wrong to delete Denver from its ADI and has requested that the Commission review the decision. In the meantime, however, in light of the order of the Cable Services Bureau and the facts stated therein, KSBS submits that it would be unfair and inappropriate to charge KSBS as a major market station, when its market has been modified to exclude the major market area. Instead, KSBS has submitted the fee due for markets that more resemble the one as determined by the Cable Services Bureau.

¹ TCI Cablevision of Colorado, Inc. 11 FCC Rcd 61098 (1996).

BORSARI & PAXSON

Should any question arise in connection with this matter, please communicate directly with the undersigned.

Respectfully submitted,

BORSARI & PAXSON

A handwritten signature in black ink, appearing to read "Guy N. Benson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Guy N. Benson

Payment Transactions Detail Report

Date: 07/14/1999

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Fcc Account Number	Payer TIN	Received Date							
9809228835181004	TELEVERDE COMMUNICATIONS CORP 10858 WARWICK BLVD SUITE A NEWPORT NEWS VA 23602	FCC2063001		9/18/1998 00:00:0							
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$3,475.00	\$3,475.00	6	MLP8	1	K18ED	GREENTV CORP	80437		\$265.00	1	PMT
\$3,475.00	\$3,475.00	3	MLP8	1	K18FI	GREENTV CORP	80437		\$265.00	1	PMT
\$3,475.00	\$3,475.00	7	MLP8	1	K22AG	GREENTV CORP	80437		\$265.00	1	PMT
\$3,475.00	\$3,475.00	5	MLP8	1	K41DP	GREENTV CORP	80437		\$265.00	1	PMT
\$3,475.00	\$3,475.00	2	MLP8	1	K63GB	GREENTV CORP	80437		\$265.00	1	PMT
\$3,475.00	\$3,475.00	4	MJU8	0	KDMDTV	GREENTV CORP	80437		\$1,075.00	1	PMT
\$3,475.00	\$3,475.00	1	MJU8	1	KSBSTV	GREENTV CORP	80437		\$1,075.00	1	PMT
Total	7								\$3,475.00		